IN THE

Supreme Court of The United States

OCTOBER TERM, 1977

No. 77-255

SUNDSTRAND CORPORATION,

Petitioner,

vs.

SUN CHEMICAL CORPORATION, RAYMOND F. RYAN and THOMAS B. HART, JR., Executors of the Estate of John B. Huarisa,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

REPLY BRIEF OF PETITIONER

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The Brief of Respondents in Opposition totally fails to address the legal issues presented by the petition of Sundstrand Corporation ("Sundstrand"). In attempting to shore up the faulty reasoning of the Court of Appeals, respondents beg the question of the correct analysis of causation in actions under Rule 10b-5 and never address the conflicts among Courts of Appeals with regard to each of the questions presented by the petition.

Respondents characterize Sundstrand's decision to purchase the SKI stock as a "mistake of law," glibly seeking to

dispose of petitioner's fundamental causation argument by misusing a term of art* and ignoring petitioner's legal arguments. Specifically, respondents never address petitioner's argument that even if Sundstrand had relied upon an erroneous legal opinion (*but see* Petition, pp. 20-22) there would have been no such error if respondents had disclosed the truth to petitioner. (Petition, pp. 13-17) If the truth had been disclosed, petitioner would have recognized that under Section 29(b) of the Securities Exchange Act of 1934 (15 U.S.C. § 78cc(b)) it could not have been under any obligation to consummate the transaction.

There is ample evidence supporting the District Court's finding that Sundstrand purchased the SKI stock not as a "mistake of law," but in reliance on respondents' repeated and uncorrected misrepresentations and omissions. (*See*, for example, Petition, p. 19; S.App. 155-59) Respondents' statements throughout their Brief in Opposition that there was no evidence regarding such reliance and causation after the merger was called off are thus patently false. Moreover, respondents do not address the fatal defect in the "superseding cause" reasoning of the Court of Appeals, namely that the entire process which led to Sundstrand's damage, including the rendering of any legal opinion, was set in motion solely by respondents unlawfully inducing Sundstrand to enter into the January 9, 1969 agreement in the first instance, a wrong that respondents do not now contest.

Respondents seek to defend the improper conduct of the Court of Appeals in going outside the trial record, in order to make the crucial *appellate* finding leading to the massive

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* A mistake of law can occur only when all relevant facts are known. E.g., *Dampskibs Aktieselskabet Thor* v. *Tropical Fruit Co.*, 281 F. 740, 743 (2d Cir. 1922); *State ex rel. McCormack* v. *American Building & Loan Ass'n*, 150 S.W.2d 1048, 1065 (Tenn. 1941).

reduction of the nearly $7,000,000 judgment, by characterizing that conduct as merely an effort to seek corroboration of material that was in the trial record. The Court of Appeals, however, offered no such rationale for its frolic through the record of pretrial discovery, and in its May 18, 1977 Order conceded that it had relied heavily on testimony not in evidence and thought it appropriate to do so. (S.App. 110-11) The undeniable fact is that the Court of Appeals relied upon material outside the trial record in order to make findings which were directly contrary to amply supported findings made by the District Court. Respondents offer no authority purporting to justify this conduct of the Court of Appeals, nor do they address the authorities to the contrary cited by petitioner. (Petition, pp. 22-23) This Court should not permit the adjudicatory process to be so corrupted and should reaffirm the long established limits of appellate review which have been brazenly ignored in this case by the Court of Appeals.

CONCLUSION

For the reasons given herein and in the petition for certiorari, we pray that the writ be granted.

Respectfully submitted,

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